

² The Order was corrected by a Nunc Pro Tunc Order dated September 22, 2005, which simply completed a sentence in the original Order to reflect that costs for the testing were to be paid by respondent.

The respondent requests review of whether the ALJ exceeded his jurisdiction in ordering the authorization of medical treatment. Respondent argues that the purpose of a prehearing settlement conference was to ascertain what issues are in dispute. Accordingly, respondent argues the ALJ's Order was outside matters properly subject to consideration at a prehearing settlement conference. Respondent further argues the ALJ exceeded his jurisdiction because he ordered additional medical treatment instead of confining the court ordered independent medical examiner to an opinion regarding claimant's functional impairment.

Claimant argues the Board does not have jurisdiction because the Order was not a final order subject to review. In the alternative, claimant argues the ALJ had jurisdiction to request an independent medical examination of claimant and the instant Order was not for treatment but merely for testing to assist the court ordered independent medical examiner obtain the information she needed to complete her rating. Therefore, the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The ALJ's September 16, 2005 Order was entered after a discussion between court and counsel at a prehearing settlement conference. It appears from the arguments in the parties' briefs to the Board that the previous court-ordered independent medical examination was discussed. Reviewing the previous Order Referring Claimant For Independent Medical Evaluation dated February 18, 2005, as well as the instant Order supports the claimant's contention that the instant Order was to enable the doctor to obtain testing necessary to complete her evaluation and rate the claimant. There is no stipulation by counsel concerning the substance of the arguments offered to the ALJ upon which his decision was based. But the Order clearly does not appear to be an order for additional medical treatment as alleged by respondent.

The ALJ's decision to have an independent medical examination performed on the claimant is interlocutory in nature and made during the litigation of a workers compensation case pending before the ALJ. This is not a final order that can be reviewed pursuant to K.S.A. 44-551. Neither is this an order entered pursuant to the preliminary hearing statute K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing medical treatment and payment of temporary total disability compensation. The Order now before the Board pertains to an interlocutory matter, ordering an independent medical examination, over which an ALJ has authority to order during the litigation of the case.

Because the Act specifically grants an ALJ the authority to appoint neutral health care providers to evaluate injured workers³, the ALJ did not exceed his jurisdiction and authority by ordering the evaluation.

The Board's jurisdiction to review appeals is governed by K.S.A. 44-534a and K.S.A. 44-551. Those statutes grant the Board the jurisdiction to review: (1) certain preliminary hearing findings; and, (2) final orders and awards. Neither statute grants the Board the authority to review the interlocutory order now in issue.

WHEREFORE, it is the finding of the Board that the application for review filed by the respondent is dismissed as the Board lacks jurisdiction to review the Order of Administrative Law Judge Brad E. Avery dated September 16, 2005.

IT IS SO ORDERED.

Dated this _____ day of November 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Terry E. Beck, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ See K.S.A. 44-510e and K.S.A. 44-516.